as the victims begged to be let go because they were being crushed. SPA 4a; RA 27a-29a, 31a-34a, 36a-37a; T 1551, 4824-26, 4829.

Patients seeking treatment for a variety of health problems were attacked by PLAN members to keep them from their appointments. RA 31a-32a, 35a-37a; T 1914-17. One fertility patient tried desperately to get through a blockade because she was ovulating and needed insemination that day, but PLAN members grabbed her and pulled her into their midst; even with police assistance, she was unable to get into the clinic. RA 31a. At a Los Angeles clinic, PLAN members grabbed the arms and legs of an ovarian surgery patient who was due to receive post-operative treatment there. When she continued to attempt to access medical services, PLAN members pulled her hair, struck her, and beat her with an anti-abortion sign until her sutures ruptured and she passed out. SPA 2a, 4a-5a; RA 35a-37a; T 1519-20, 1522.

PLAN's crimes by force and violence, proved at trial, also included the following: In Cherry Hill, New Jersey, PLAN members made human chains and violently pushed back clinic staff who were trying to keep a corridor open for their patients, causing property damage. T 4822-25; PX 1441. A PLAN member grabbed the clinic administrator by the hair and threw her to the sidewalk. T 4824-26, 4829.

PLAN leaders repeatedly invaded the Delaware Women's Health Organization clinic; they destroyed medical equipment and medications, tore down cabinets, and chained themselves to operating tables; they threatened the administrator to induce her to leave her job. RA 23a-24a, 29a-30a; SPA 111a. In Pensacola, they ransacked a clinic, destroyed medical equipment, attacked a staff

member and a volunteer, slamming them against the wall and causing spinal damage to both women. RA 33a-35a, 43a-44a; T 1471-72, 4012-26.

In Wichita, after forcing a clinic to close for a week, PLAN members barricaded the entrances, surrounded and beat on patients' cars, and grabbed and bruised patients trying to pass through corridors made by federal marshals. RA 25a-28a; T 1088-89; PX 312, 413. Similar assaults and otherwise violent conduct occurred in Atlanta, RA 37a-38a; T 1551-52; Milwaukee, SPA 111a; T 1871-72, 1914; Lake Forest, Illinois, RA 44a; and elsewhere, SPA 5a, 110a; PX 513; T 1209-11; RA 38a-40a, 45a.

None of the 121 RICO predicate acts found by the jury was a peaceful or legal act, such as a sit-in or blockade. SPA 126a, n.6. At Petitioners' request, T 4488-90, one interrogatory, Q6, asked the jury whether any predicate act was "based solely on blockades of clinic doors or sit-ins within the clinics, without more?" The jury answered, "No."

PLAN's chosen tactic was a form of forcible invasions and blockades that PLAN aptly called "blitzes," SPA 135a; RA 13a; PX 801, p. 13; T 1018, and, later called "rescues," which entailed whatever force was necessary to induce clinics to close and patients to give up their contracts for medical services. SPA 2a, 5a, 111a, 134a; RA 13a, 42a-44a; PX 628, p. 14; T 980-01, 1006-07, 1970, 3660-61. PLAN Director Randall Terry's public definition of "rescue" made it clear that force was authorized:[2] PLAN leaders told

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[2] Terry, Operation Rescue's first National Director, T 1823-24, settled with Respondents before trial and agreed to permanent injunctive relief.

clinics to "close or be closed" by their "blitzes." SPA 115a; RA 17a, 19a-20a. Each of the attacks presented to the jury involved the use or threat of force or violence. T 5005.

PLAN was formed specifically to target medical providers across the nation, PX 140, and its leaders, including PLAN founder and Director Scheidler, publicly endorsed and advocated the use of force and violence. T 1910. PX 628, p.14. Scheidler praised those who violently invaded the Pensacola Ladies' Center and brutally attacked its staff for the "good job" they did in terrorizing the clinic and its patients. RA 15a, 34a-35a. Scheidler also stated that he did not consider arson and bombings to be "violence." *Id.*

Over the fourteen years of its operation, PLAN mobilized anywhere from a few dozen to thousands of members from many states to carry out its "blitzes" in cities across the country. PX 17A, 1084; T 1374. In addition to the crimes detailed above, PLAN orchestrated violent attacks in Chicago, Illinois; Farmington, Michigan; Jackson, Mississippi; Dobbs Ferry, New York; New York City, New York; Fargo, North Dakota; San Antonio, Texas; and in other locations. SPA 110a, 116a; T 1078.

Since PLAN's strategy was to overwhelm local law enforcement and close clinics without suffering any legal consequences, SPA 114a; T 3938, 4815-16; RA 8a, PLAN leaders targeted cities where they thought law enforcement resources were weak; alternatively, they amassed so many "blitzers" that even well-staffed police forces could not stop them, e.g., RA 26a-27a. Clinics that obtained territorially limited injunctions from local courts fared little better than those with none; PLAN leaders tore up court orders and continued with their violent "blitzes." PX

468, 1098; T 1068-69. As the trial court found, geographically limited injunctions had failed to prevent PLAN's crimes; PLAN would either ignore the injunctions altogether or move its operations to new jurisdictions. SPA 134a-135a.

It was not just abortion patients who were targeted for violence. Respondent clinics offered a broad range of services, including gynecological treatment and adoption assistance, and PLAN targeted every woman trying to enter, including those with appointments for cancer screening, fertility treatment, and annual physicals, as well as those with appointments to purchase contraceptive products and counseling, SPA 111a-12a; PX 108; T 1914, 1368, 2552-54. As Scheidler explained the rationale for the violence and threats of violence, "we don't want them to go in for any service . . . ; it just keeps the abortionists in business." *Id.*

Petitioners were all high-ranking PLAN leaders who organized and participated in the pattern of crimes that included violence and threats of violence in interstate commerce. SPA 19a, 113a-116a. Before holding a Petitioner liable, the jury was required, in addition to finding that each Petitioner operated or managed the enterprise through a pattern of predicate crimes, to find that each crime on which liability was based was committed "knowingly, willfully and wrongfully." *Id.*

The trial judge commented that the proof that Petitioners authorized or ratified the crimes was voluminous enough "to fill up this courtroom." T 4563-64. Thus, crimes committed unintentionally or without PLAN's approval could not, and did not, trigger liability. In addition, the trial judge required that crimes committed by any alleged

PLAN member be closely tied to Petitioners; thus there was no risk that violence unauthorized by PLAN might be imputed to Petitioners. T 10-90 (2/27/98).

Respondents did not challenge Petitioners' right to engage in protected speech, even when it was unwelcome, uninvited, insulting, or outrageous. To the contrary, Respondents and the trial court reminded the jury that even offensive speech receives First Amendment protection.[3] Thus, the verdict was not based on Petitioners' lawful conduct or their anti-abortion message.

The evidence established far more than mere "interference" with the rights of clinics and patients. The jury was instructed that each predicate act of extortion had to be based on the "wrongful" use of force, violence or fear, and that constitutionally protected and other lawful conduct was excluded.

After the jury rendered its unanimous verdict, the district court took additional evidence on whether an injunction was necessary. Despite Petitioners' contention that they had abandoned their wrongful conduct after

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[3] T 5118. Respondents joined Petitioners in asking that the jury be instructed: "Nor is the right to engage in peaceful protest an issue in this lawsuit. The parties agree that peaceful picketing, leafleting and participating in the legislative process are activities protected by the First Amendment of the United States Constitution." R1101, Final Pretrial Order, Agreed Instruction #18. Damages had to flow exclusively from the criminal acts, not from constitutionally protected speech that may have accompanied it. Respondents' counsel reminded the jury not to include any protected conduct in the predicate acts. T 5118. These jury instructions and admonitions were intended to ensure that only violence and true threats of violence, which are not protected by the First Amendment, *see, e.g., Virginia v. Black*, 538 U.S. 343 (2003), were punished by the verdict and enjoined by the court.

enactment of the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. §248 (1994), the trial court found that PLAN's pattern of crimes had continued unabated. Even when FACE injunctions had been issued against PLAN members, they continued to cross state lines to promote and carry out their violent crimes in new jurisdictions. SPA 134a. The district court therefore concluded that an injunction was necessary. SPA 133a.

The Seventh Circuit affirmed the judgment and the injunction. Its decision expressed hope that the injunction would end the violence and promote peaceful discourse: "[P]erhaps in the end the injunction may further rational discourse on one of the most volatile political controversies facing the nation today. Violence in any form is the antithesis of reasoned discussion. By directing those with passionate views about the abortion controversy – on either side – away from the use of threats and violence and back to 'all the peaceful means for gaining access to the mind,' the injunction the district court issued is in harmony with the fundamental First Amendment protection of free speech." SPA 25a. To a significant extent, that hope has been fulfilled; the injunction ended PLAN's reign of terror, and in the ensuing seven years, no formal enforcement action has been necessary. It has not put an end to lawful protest.

This Court, in 2003, reversed, concluding that extortion requires that there be an attempt to obtain property, which was not present in this case. The Court stated: "Because we find that petitioners did not obtain or attempt to obtain property from respondents, we conclude that there was no basis upon which to find that they committed extortion under the Hobbs Act." 537 U.S. at 408. The Court remanded the case for further proceedings.

On remand, the Seventh Circuit noted that this Court had not considered the four counts of the jury's verdict based on violence and threats of violence designed to interfere with interstate commerce. The Seventh Circuit "remand[ed] [the case] to the district court to determine whether the four predicate acts involving 'acts or threats of physical violence to any person or property' are sufficient to support the nationwide injunction that it imposed." *National Organization for Women v. Scheidler* (unpublished order), 91 Fed.Appx. 510, 513 (7th Cir. 2004). The Court of Appeals said that as part of this inquiry, the district "court may find it necessary to interpret the language of the Hobbs Act. . . . Specifically, the court may need to determine whether the phrase "commits or threatens physical violence to any person or property" constitutes an independent ground for violating the Hobbs Act, or rather, relates back to the grounds of robbery or extortion." *Id.*

SUMMARY OF ARGUMENT

In its prior ruling in this case, *NOW II*, this Court reversed as to 117 of the 121 counts found by the jury that were based on extortion, concluding that there was not extortion because the violent actions of Petitioners were not intended to enrich them. The petition for certiorari did not raise, the merits briefs did not discuss, and this Court did not consider the four counts of the jury's verdict that were based on physical violence and threats of physical violence under the Hobbs Act.

The Seventh Circuit, on remand from this Court, recognized this and remanded the case to the district court

to determine whether these four counts were sufficient to sustain the nationwide injunction and, if so, whether the Hobbs Act prohibits violence and threats of violence designed to interfere with interstate commerce apart from extortion or robbery. No court in this litigation has addressed that question. The Seventh Circuit appropriately remanded this case for these issues to be determined in the first instance by the district court and this Court should affirm this order rather than unnecessarily decide issues not yet considered by the lower courts. If, for example, the four counts of physical violence are deemed inadequate to support the injunction, then there is no need to address the meaning of either the Hobbs Act or the RICO statute.

If this Court reaches the issues of statutory interpretation raised in this case, they are answered by the most basic rule of statutory construction: the plain meaning of a statute is controlling and must be followed. *See, e.g., United States v. Ron Pair Enters*, 489 U.S. 235, 242 (1989); *K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Federal Energy Regulatory Comm'n v. Martin Exploration Management Co.*, 486 U.S. 204, 209 (1988).

As to the meaning of the Hobbs Act, the statute provides that whoever obstructs interstate commerce "by robbery or extortion, or attempts or conspires so to do, *or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section* shall be fined under this title or imprisoned not more than twenty years, or both." 18 U.S.C. §1951(a) (emphasis added). The plain language of the statute thus prohibits three separate activities that interfere with interstate commerce: 1) robbery (and attempts or conspiracies to commit robbery), or 2) extortion (and

attempts and conspiracies to commit extortion), or 3) physical violence and threats of physical violence (that are part of a plan to obstruct interstate commerce). This Court has stressed that the Hobbs Act "speaks in broad language," and that Congress has chosen to use "all constitutional power" "to punish interference with interstate commerce by extortion, robbery, *or physical violence*." *United States v. Stirone*, 361 U.S. 212, 215 (1960) (emphasis added).

The interpretation of the Hobbs Act urged by Petitioners and the United States, that the law is limited to extortion or robbery, would render meaningless the Act's clear statement that it prohibits extortion or robbery *or physical violence or threats of physical violence* designed to interfere with interstate commerce. Petitioners' interpretation, which would nullify an entire clause of the Act, violates "the cardinal principle of statutory construction" that the Court must "give effect to every clause and word of a statute." *Bennett v. Spear*, 520 U.S. 154, 173 (1997).

Likewise, the other statutory question raised by this case, whether injunctions are allowed as a remedy in civil RICO actions, is also resolved by the plain meaning of the statute. Section 1964(a) unambiguously gives district courts broad power to remedy RICO violations, including the power "to prevent and restrain violations of section 1962" and to "impos[e] reasonable restrictions on the future activities" of statute violators. Moreover, federal courts are presumed to retain all of the equitable powers conferred by the Judiciary Act of 1789, 1 Stat. 73, 78, unless a statute clearly denies such equitable relief. This Court has long required the "clearest command" from Congress before federal courts can be stripped of their

equitable powers. *See, e.g., Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 70-71 (1992). Nothing in the RICO Act or its legislative history indicates any congressional intent to strip federal courts of their inherent equitable powers. Moreover, denying federal courts the injunctive power expressly provided by the Act and traditionally exercised by federal courts would contradict Congress's express command that the RICO statute "be liberally construed to effectuate its remedial purposes." Pub. L. 91-452, §904(a), 84 Stat. 922, 947 (1970).

ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION TO EFFECTUATE THIS COURT'S MANDATE BY REMANDING THIS CASE TO THE DISTRICT COURT TO DETERMINE WHETHER AN INJUNCTION SHOULD ISSUE AND TO DECIDE AN IMPORTANT ISSUE OF FEDERAL LAW, NOT PREVIOUSLY ADDRESSED BY ANY COURT IN THIS CASE, SHOULD BE AFFIRMED

A. The Prior Decision Of This Court Did Not Consider Or Decide Whether The Hobbs Act Prohibits Physical Violence Or Threats Of Physical Violence In Interstate Commerce Apart From Extortion Or Robbery

In *Scheidler v. National Organization for Women*, 537 U.S. 393 (2003), this Court focused entirely on the meaning of extortion. The Court did not consider, explicitly or implicitly, whether the Hobbs Act's plain language prohibits physical violence or threats of violence in interstate commerce unconnected to extortion or robbery. Nor did

this Court consider whether the injunction in this case could stand based on the four counts of physical violence and threats of physical violence found by the jury that did not include extortion or robbery. In accord with well-settled precedent and practice, the Seventh Circuit appropriately remanded this case to the District Court for resolution of this unresolved issue which no court in this case previously had addressed. Compelling reasons support affirming the Seventh Circuit's remand.

First, the issues presented to this Court for its prior decision focused entirely on the meaning of "extortion" and the availability of injunctions under civil RICO. No issue was presented concerning whether the Hobbs Act prohibits physical violence or threats of physical violence apart from extortion or robbery. The first paragraph of this Court's opinion makes this clear: "We granted certioriari in these cases to answer two questions. First, whether petitioners committed extortion within the meaning of the Hobbs Act. Second, whether respondents, as private litigants, may obtain injunctive relief in a civil action pursuant to . . . the Racketeer Influenced and Corrupt Organization Act." 537 U.S. at 397 (citations omitted).

This Court granted certiorari limited to these questions and nothing within the issues presented asked for consideration of whether the Hobbs Act applies to acts of violence apart from extortion or robbery. *See* Pet. for Writ Cert., *Scheidler v. Nat'l Org for Women* (No. 01-1118). This Court consistently has adhered to Supreme Court Rule 14.1(a), which provides that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." *See Toyota Motor Mfg., Ky., Inc. v. Willians*, 535 U.S. 184, 202 (2002); *Glover v. United States*, 531 U.S. 198, 205 (2001). This Court frequently has explained that

it will not decide issues outside the questions fairly presented by a petition for a writ of certiorari. *See, e.g., Lopez v. Davis*, 531 U.S. 230, 244 n.6 (2001); *West v. Gibson*, 527 U.S. 212, 223 (1999); *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 140 (1998). Therefore, the issue of whether the Hobbs Act prohibits violence and threats of violence, apart from extortion or robbery, was not presented to this Court.

Second, quite appropriately then, this Court did not decide the question of whether the Hobbs Act applies to acts of physical violence or threats of physical violence apart from extortion or robbery. The Court clearly stated its holding: "[P]etitioners did not commit extortion because they did not 'obtain' property from respondents as required by the Hobbs Act," and this determination "renders insufficient the other bases or predicate acts of racketeering supporting the jury's conclusion that petitioners violated RICO." 537 U.S. at 397. Nothing in the Court's opinion addressed, or even alluded to, the issue of whether the Hobbs Act prohibits physical violence or threats of physical violence apart from extortion or robbery. The Court did not even mention the four counts of violence unrelated to extortion in its statement of the facts underlying the appeal. *See* 537 U.S. at 399. This Court's opinion focused entirely on the meaning of extortion within the Hobbs Act.

The Seventh Circuit thus was correct in finding that this issue was not resolved by this Court's earlier decision. As the Court of Appeals explained: "We note that the Court's opinion in *NOW II* makes no mention of these four predicate acts, and the parties' briefs before the Court reference these acts only in passing in footnotes. To conclude that the Court found these four predicate acts insufficient to support the district court's injunction would therefore require that we find both that the Court went

beyond the scope of its grant of certiorari, and that it did so with respect to an issue not briefed by the parties and not discussed in its opinion. We decline to draw such a conclusion." *NOW v. Scheidler*, 396 F.3d 807, 811 (7th Cir. 2005).

Third, the Court of Appeals reasonably and correctly concluded that the single sentence at the end of the Court's opinion, that it had addressed all of the grounds for the injunction, was mistaken. The Court ended its opinion in *NOW II* by stating: "Because all of the predicate acts supporting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." *Scheidler*, 537 U.S. at 411.

Quite clearly, all of the predicate acts supporting the jury's verdict had *not* been addressed by the Court. Extortion was the basis for 117 of the counts, but reversing those still left four counts based on violence and threats of violence unresolved.

The law is clear that "[i]f the Court reverses a judgment, only those portions of the judgment that the Court addresses and decides are affected." Moore's Federal Practice §408.100[4]. For example, in *Mutual Life Insurance Co. v. Hill*, 193 U.S. 551, 553-54 (1904), this Court explained: "[T]he rule is that a judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided."

This Court's decision in *Charles Wolff Packing Co. v. Court of Indus. Relations*, 267 U.S. 552, 562 (1925), is particularly apt. When the *Charles Wolff* litigation was in the Supreme Court the first time there were two questions

before the Court: (1) the validity of a schedule of wages, and (2) a regulation of maximum hours imposed by statute on the Charles Wolff Packing Company. The Court held the schedule of wages invalid and, without giving any explanation, never addressed the maximum hours issue.

On remand, the Kansas Supreme Court struck all mention of wages from its order, but left in place the regulation of hours. *See Court of Indus. Relations v. Chas. Wolff Packing Co.*, 219 P. 259 (Kansas 1923). When the Charles Wolff Company brought the case back to the Supreme Court it "insist[ed] that by reversing the original judgment of the state court, and not merely a part of it, [the Supreme Court] adjudged the invalidity of the entire Act." *See Chas. Wolff II*, 267 U.S. at 562. The Supreme Court rejected Wolff's argument and held that the failure to address a question that was properly before the Supreme Court is not an adjudication of its merits. *Id.*

The situation in the present case makes it even less appropriate to consider the failure to address a question as adjudication of its merits. Not only did this Court not address whether the Hobbs Act applies to physical violence and threats of physical violence without extortion or robbery, the issue was not addressed or ruled on by the District Court or the Court of Appeals, was not included in the petition for certiorari or the grant of certiorari, and was neither briefed nor argued before this Court.

Fourth, the Seventh Circuit's action remanding the case to the District Court was completely consistent with the mandate of this Court. This Court did not enter judgment, but instead reversed the judgment and remanded the case. This Court certainly had the authority to enter a judgment for the Petitioners, but did not do so.

Instead, the certified judgment, issued by the Clerk of the Supreme Court and sent to the Seventh Circuit merely says that the cases are "reversed . . . and . . . remanded . . . for further proceedings in conformity with the opinion of this Court." Certified Copy of Judgment in *Scheidler v. National Organization for Women* (Sent by Office of the Clerk, Supreme Court of the United States to Clerk, United States Court of Appeals for the Seventh Circuit, March 28, 2003).

Petitioner Operation Rescue is wrong in its statement that the Seventh Circuit's order was "direct defiance of this Court's ruling." Operation Rescue Br. at 9. Quite the contrary, the Seventh Circuit's opinion on remand is in full compliance with the Supreme Court's mandate because the Seventh Circuit opinion effectively directs the District Court to set aside the original injunction. In compliance with the Supreme Court's judgment authorizing "further proceedings in conformity with the opinion of [the Supreme Court]," the Seventh Circuit directed the District Court to institute additional proceedings to determine whether to impose a new injunction based on the four remaining predicate offenses that were not before the Supreme Court in its prior ruling in this litigation.

In fact, this Court's decisions make clear that the Court of Appeals acted entirely appropriately in considering issues not addressed by this Court. As this Court explained in *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895): "When a case has been once decided by this court on appeal, and remanded to the Circuit Court, whatever was before this court, and disposed of by its decree, is considered as finally settled. . . . But the Circuit Court may consider and decide any matters left open by the mandate of this court."

Petitioners' argument would result in needless litigation in this Court and an extremely inefficient allocation of judicial resources. Petitioners' proposed rule would require every respondent to raise in this Court every conceivable alternative ground to support the lower court's judgment, whether or not those grounds were fairly included in petitioners' question presented. If a respondent failed to do so, and if the Court's remand instructions did not explicitly direct the lower courts to address such issues, under Petitioners' theory, all alternative grounds would be automatically extinguished, without any briefing or consideration of the merits.

This Court never has required respondents to raise alternative grounds for affirmance that go beyond the issues presented in the grant of certiorari. In fact, the rule is the opposite. In *Yee v. City of Escondido*, 503 U.S. 519, 535-36 (1992), this Court explained that by limiting its consideration to the questions presented in the petition, the Court avoids forcing respondents to address other issues. Where, as here, "the decision below involves issues on which the petitioner does not seek certiorari, the respondent would face the formidable task of opposing certiorari on every issue the Court might conceivably find present in the case." *Id.* at 536. In fact, when respondents do raise alternative grounds, the Court generally refuses to address them. *See, e.g., Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249, 253-54 (1999).[4]

[4] Nor are Petitioners correct in their assertion that in the prior proceedings in this Court "NOW conceded that its Hobbs Act predicates *all* hinged on extortion." Operation Rescue Br. at 11 n.8. At no point did Respondents say or imply this. Petitioner presented the issue to this Court as to the meaning of extortion under the Hobbs Act and that is

(Continued on following page)

There is no merit to the Petitioners' claim that the National Organization for Women and the other Respondents should have sought rehearing in this Court. Scheidler Br. at 14-15. As explained above, the question of whether the Hobbs Act applies to violence or threats of violence was not presented in the grant of certiorari or the merits briefs and was not addressed by the Court. Thus, NOW and the other Respondents were not seeking a reconsideration of an issue decided by the Supreme Court; they were asking the Court of Appeals to consider an issue that had been decided by the jury, but not ruled on by that court or this Court. The appropriate recourse was on remand to ask that the Court of Appeals consider the remaining four counts based on violence and threats of violence apart from extortion. There certainly is nothing in the Rules or decisions of this Court requiring the Respondents to have sought rehearing of an issue not presented and not decided in order to raise that issue on remand.

B. This Court Should Either Affirm The Court Of Appeals' Decision To Remand The Case Or Dismiss Certiorari As Having Been Improvidently Granted

Ordinarily, the Supreme Court will not decide a question that was "neither raised nor resolved" in the lower courts. *Glover v. United States*, 531 U.S. at 205. In *Yee v. City of Escondido*, this Court refused to consider the

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what Respondents addressed and this Court decided. Petitioners did not raise, and thus Respondents did not brief and this Court did not consider, the issue of whether the Hobbs Act should be understood as prohibiting violence or threats of violence apart from extortion or robbery. That issue is now before this Court for the first time.

question whether the government's action was a regulatory taking, because that had not been decided in the lower court proceedings. As this Court explained: "Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." 503 U.S. at 538. *See Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552, n.3 (1990) ("Applying our analysis . . . to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion"). In countless cases, this Court has declared that it will not rule on questions that have not yet been addressed by the lower courts. In *Patrick v. Burget*, 486 U.S. 94, 99 (1988), the Court explained: "This Court usually will decline to consider questions presented in a petition for certiorari that have not been considered by the lower court. We see no reason to depart from this practice in the case at bar. Accordingly, we take no position on the evidentiary question raised by petitioner." *Id.* at 99 n.5. *See also Duignan v. United States*, 274 U.S. 195, 200 (1927) ("This Court sits as a court of review. It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed.").

Since the Court of Appeals has never considered the issue of whether the Hobbs Act prohibits violence and threats of violence apart from extortion and robbery, it appropriately remanded the case to the District Court. This Court should do exactly that, allowing the District Court to consider the issue, followed by appeal to the Seventh Circuit and the possibility of review in this Court.

In fact, there is a compelling reason for this Court either to affirm the Court of Appeals and remand the case to the Seventh Circuit or dismiss certioriari as having been improvidently granted. The Court of Appeals acknowledged that there was an important issue of whether the injunction could be upheld based on the four counts of violence and threats of violence. If the District Court holds that the injunction cannot stand based on the remaining four counts, then there will be no need for this Court to consider the meaning of the Hobbs Act or RICO. Put another way, if an injunction cannot rest on the remaining four counts, anything this Court says about the Hobbs Act or RICO would be an unnecessary advisory opinion as to the meaning of federal law. *See Flast v. Cohen*, 392 U.S. 83, 96-97 (1968) ("the implicit policies embodied in Article III . . . impose the rule against advisory opinions.") The Seventh Circuit was correct, then, in concluding that the appropriate course was for the District Court to decide how to handle the four counts of the jury verdict that were not addressed by this Court.

II. THE HOBBS ACT PROHIBITS PHYSICAL VIOLENCE AND THREATS OF PHYSICAL VIOLENCE INTENDED TO INTERFERE WITH INTERSTATE COMMERCE.

A. The Plain Language Of the Hobbs Act Is Clear And Must Be Followed.

The most basic rule of statutory construction, repeatedly invoked by this Court, is that the plain language of a statute must be followed. As this Court explained: "If the statute is clear and unambiguous that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

K-Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988); *see also United States v. Ron Pair Enter, Inc.*, 489 U.S. 235, 242 (1989) ("The plain meaning of the legislation should be conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters.").

The plain meaning of the Hobbs Act is clear. It states:

> "Whoever in any way or degree obstructs, delays, or affects commerce or movement of any article or commodity in commerce, by robbery or extortion, or attempts or conspires so to do, *or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section* shall be fined under this title or imprisoned not more than twenty years, or both."

18 U.S.C. §1951(a) (emphasis added). The statute thus prohibits three separate activities that interfere with interstate commerce: 1) robbery (and attempts or conspiracies to commit robbery), or 2) extortion (and attempts and conspiracies to commit extortion), or 3) violence and threats of violence (that are part of a plan to obstruct commerce). Indeed, this Court has expressly recognized this and declared: "[The Hobbs] Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery, *or physical violence.*" *United States v. Stirone*, 361 U.S. 212, 215 (1960) (emphasis added); *see also United States v. Culbert*, 435 U.S. 371, 373 (1978) (quoting *Stirone*).

The plain language of the Hobbs Act prohibits physical violence and threats of physical violence designed to interfere with interstate commerce without any link to

robbery or extortion. For years, the United States government relied on this interpretation in bringing prosecutions under the Act. *See United States v. Yankowski*, 184 F.3d 1071 (9th Cir. 1999); *United States v. Franks*, 511 F.2d 25 (6th Cir.), *cert. denied*, 422 U.S. 1042 (1975). It is the newly minted interpretation of the statute that is at odds with the statute's plain meaning.

Contrary to Petitioners' assertion, this Court never has suggested that the statute's clear prohibition of violence and threats of violence applies only when there is extortion or robbery. *See, e.g.*, Scheidler Br. at 28 (arguing that *United States v. Enmons*, 410 U.S. 396 (1973), and *NOW II* held that the Hobbs Act applies only to extortion and robbery). Both *Enmons* and *NOW II* were entirely about the meaning of "extortion" within the Hobbs Act. *Enmons*, for example, concluded that extortion requires "obtaining of property of another" through wrongful means. 410 U.S. at 399. *Enmons* did not discuss whether the Hobbs Act prohibits violence and threats of violence interfering with interstate commerce in the absence of robbery or extortion. *NOW II* similarly held that extortion requires that the person engaged in extortion seek to receive a tangible benefit. Neither case considered, let alone resolved, whether the Hobbs Act prohibits physical violence and threats of violence in interstate commerce without extortion or robbery.

Accepting Petitioners' interpretation of the Hobbs Act would render key parts of the statute's language superfluous. This Court has explained that it is "the cardinal principle of statutory construction . . . that it is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section." *Bennett v. Spear*, 520 U.S. at 173. For example, Petitioners'

argument, that the statute prohibits only extortion and robbery, deprives the word "or" in the statute of any meaning. The statute says: "*or* commits or threatens violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section." 18 U.S.C. §1951(a). This Court has stressed that the word "or" must be given its plain, disjunctive meaning. In *Reiter v. Sonotone Corp.*, 422 U.S. 330, 339 (1979), this Court explained: "In construing a statute we are obliged to give effect, if possible to every word Congress used. Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise; here it does not." Similarly, in *Federal Communication Commission v. Pacifica Foundation*, 438 U.S. 726, 739-40 (1978), this Court explained: "The words 'obscene, indecent, or profane' are written in the disjunctive, implying that each has a separate meaning."

Likewise, here, the statute prohibits extortion *or* robbery *or* violence and threats of violence that obstruct interstate commerce. If violence and threats of violence are prohibited only when there is extortion or robbery, as Petitioners urge, the word "or" would be deprived of all meaning. Petitioners' interpretation of the statute would be plausible only if Congress said: "Whoever . . . affects commerce . . . by robbery or extortion, or attempts to do so by committing or threatening violence to any person or property, shall be fined . . . or imprisoned." But that is not what Congress prohibited. Equally important, the prohibition of violence and threats of violence obstructing interstate commerce would be rendered meaningless if the Hobbs Act were read to prohibit only extortion and robbery.

Petitioners' reading of the language is also inconsistent with what Congress would have thought its chosen language meant in 1948 when it enacted the current version of the provision. At the time the Hobbs Act was adopted, it was recognized that the definition of extortion already included obtaining property from another "by wrongful use of actual or threatened force, violence or fear." The 1939 Black's Law Dictionary defines extortion as "[t]he taking of property from another, with his consent, *induced by wrong use of force or fear, or under color of official right.*" (emphasis added). In fact, the Hobbs Act itself defines extortion as including violence and threats of violence. Section 1951(b)(3) specifies that extortion must involve "induce[ment] by wrong use of actual or threatened force, violence, or fear." Robbery is defined as "the unlawful taking or obtaining of property from the person . . . against his will, by means of *actual or threatened force, or violence, or fear of injury,* immediate or future, to his person or property." 18 U.S.C. §1951(b)(1) (emphasis added). There would be no reason for the statute to include the clause prohibiting violence and threats of violence if it did not mean to make that a separate offense since those requirements are explicitly in the definition of extortion and robbery. *See* Craig M. Bradley, *NOW v. Scheidler: RICO Meets the First Amendment*, 1994 Sup. Ct. Rev. 129, 142-143 (1994).

Under their interpretation, Petitioners have to stretch to come up with some meaning for the clause prohibiting "physical violence" or threats of violence. Scheidler Br. at 34-35; Operation Rescue Br. at 13; United States Br. at 11. They have tried to imagine cases in which "physical violence" would cover individuals who were acting in furtherance of a plan to commit robbery or extortion, but

whose acts do not already fall within the definition of robbery, extortion, or attempts or conspiracies to extort or rob. They focus on "attempts" as such situations. Scheidler Br. at 34-35; Operation Rescue Br. at 13; United States Br. at 11. But anyone who commits physical violence to a person or property in furtherance of a plan of robbery or extortion is guilty of attempting one of those crimes, or if others are involved, of conspiring to commit one or the other. By the time a person commits or threatens violence, he or she has taken a sufficient step to be guilty of attempt.

Operation Rescue offers the example of the "subordinate 'enforcer' who, while not himself extorting anything, harms people or property when the extortionist does not obtain the desired payment from the victim." Operation Rescue Br. at 13 n.9. But such a subordinate enforcer would be guilty either as a conspirator under the Act's prohibition of conspiracy, or guilty as an accomplice. *See* 18 U.S.C. §2. Another example the United States offers is where the "government has insufficient proof of an attempt or a conspiracy." United States Br. at 11. But this is not plausible: without evidence of conspiracy or attempt, there likely would not be evidence that the violence was in furtherance of a plan to commit robbery or extortion. At the very least, as the Court of Appeals noted, "It seems unlikely that Congress included the 'violence' language to capture such a tiny set of academic hypotheticals." 396 F.3d at 816. *See also* Bradley, *supra*, at 142-43 ("[The Hobbs Act] may simply forbid committing or threatening violence in furtherance of a plan to obstruct commerce by robbery or extortion. But this interpretation makes no sense! Robbery and extortion frequently involve the commission (robbery) or threat (extortion) of violence. . . .

Moreover, the 'robbery and extortion' clauses also forbid 'attempts' and conspiracies. Thus, under this reading, the 'physical violence' clause would be less inclusive, and hence would add nothing, to the preceding 'robbery' and 'extortion' clauses. One who commits violence in furtherance of a plan to commit robbery or extortion has either committed, attempted to commit, or conspired to commit robbery or extortion and thus has violated the first clause, rendering the third clause nugatory.")

Petitioners argue that the statute prohibits only extortion or robbery because it punishes those who commit or threaten "physical violence to any person or property *in furtherance of a plan or purpose to do anything in violation of this section*." Operation Rescue Br. at 12; Scheidler Br. at 22-23. Petitioners read the italicized language to refer to robbery or extortion. The only sensible reading of this language, however, is that it simply means that the statute is prohibiting physical violence and threats of physical violence that further a plan to obstruct interstate commerce. To adopt Petitioners' construction renders the word "or" and the prohibition of "physical violence" and threats of violence entirely superfluous. This would violate this Court's "duty to give effect, if possible to every clause and word of a sentence." *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see also United States v. Menasche*, 348 U.S. 528, 538-39 (1955); *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883).

Moreover, the title of the Hobbs Act makes clear that the last phrase, which Petitioners focus on, is a prohibition of physical violence and threats of physical violence in interstate commerce, not a limitation of the statute to extortion or robbery. Congress titled the statute, "Interference with commerce by threats or violence." Considering

the Act's title is a traditional means of statutory construction. The designation given to a statute by the legislature "has a communicative function" and is considered a valuable "intrinsic" aid to statutory meaning. 2A Norman Singer, Statutes and Statutory Construction §47.03 at 214 (6th ed. 2000). Chief Justice John Marshall's view, that "[t]he title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature," *United States v. Palmer*, 16 U.S. 610, 631 (1818), has been reaffirmed many times by this Court. In the famous statutory construction case, *Rector of Holy Trinity Church v. United States*, 143 U.S. 457, 462 (1892), the Court said "[a]mong other things which may be considered in determining the intent of the legislature is the title of the act." Recently, in *Almendarez-Torres v. United States*, 523 U.S. 224, 233 (1998), the Court affirmed that "the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." *See also Immigration and Naturalization Serv. v. Nat'l Ctr. for Immigrants' Rights*, 502 U.S. 183, 189 (1991) ("the title of a statute or section can aid in resolving an ambiguity in the legislation's text"); *United States v. Oregon & C.R. Co.*, 164 U.S. 526, 536 (1896) ("if it can be said that the words of the statute admit of any reasonable doubt as to their meaning or application, it is clearly proper that the title of the act be considered in determining the intent of Congress.")

The title of the 1948 revision of the Hobbs Act clearly states the scope of the Act. The Act is directed, as the title says, at "Interference with commerce by threats or violence." The wording of the title was a very conscious choice by the revisers. Because the original Hobbs Act was enacted, in 1946, as an amendment to Anti-Racketeering

Act of 1934, 48 Stat. 979 (1934), codified at 18 U.S.C. §§420a-420e (1940 ed.), it carried forward the title of the earlier statute: "An Act to protect trade and commerce against interference by violence, threats, coercion, or intimidation." *See* 60 Stat. 420 (1946). The Anti-Racketeering Act of 1934, "which was the predecessor to the Hobbs Act, targeted, as its name suggests, racketeering activities that affected interstate commerce, including both extortion and coercion." *NOW II*, 537 U.S. at 405.

The 1948 revisers understood that the Hobbs Act did not extend to mere "coercion" or "intimidation" and they omitted those terms from the statute's title. *See* 62 Stat. 793 (1948). The obvious implication is that the revisers understood the revised statute to "target" what its title says: threats and violence that interfere with commerce. Congress, in enacting the revised statute with the new title set out in the text of the law – "Interference with commerce by threats or violence" – ratified this understanding. *See* 62 Stat. 793 (1948); 1 U.S.C. §204(a).

Petitioners' strained interpretation of "in furtherance of a plan or purpose to do anything in violation of this section" also ignores the obvious and intentional difference between this language and the one clause of §1951(a) that does explicitly refer back to robbery and extortion. Attempts and conspiracies are specifically tied to the preceding robbery and extortion clause by the phrase "so to do." Had Congress intended to similarly limit the violence clause, it could simply have used the same language, stating "or commits or threatens physical violence to any person or property in furtherance of a plan or purpose so to do." Congress intentionally did not adopt this parallel construction, however, and instead chose a phrase that referred broadly to the section as a whole. Petitioners'

attempt to impose identical meanings on these very different clauses should be rejected as contrary to the plain meaning of the text. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.")

Petitioners place great weight on the Advisory Note which says that Congress did not mean to make substantive changes in the Hobbs Act in reenacting it in 1948. Scheidler Br. at 24. But this Advisory Note cannot take precedence over the literal language of the statute. This Court on other occasions has expressly recognized that Reviser's Notes are not authoritative and are frequently wrong. *See, e.g., United States v. Wells*, 519 U.S. 482, 497 (1997) ("the revisers' assumption that the consolidation made no substantive change was simply wrong. . . . Those who write revisers' notes have proven fallible before. *See State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 532, n.11 (1967).")[6]

In 1994, Congress amended the Hobbs Act. P.L. 103-322, 108 Stat. 2147. In that Amendment, Congress changed some of the language of subsection (a), but not any other sections of the law. When Congress enacted that change, it knew that the Hobbs Act was being used against violence and threats of violence, apart from extortion and

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[6] There are other instances where the legislative history says that there are only stylistic changes, but Congress included important substantive alterations as well. For example, this is what occurred with the Judicial Code, which was recodified at the same time as the Criminal Code, and was changed in a number of substantive respects. *See* William W. Barron, The Judicial Code, 8 F.R.D. 439 (1948-49).

robbery. Congress could have, but did not, revise the language of the statute to limit it to instances of extortion or robbery.

B. There Is No Reason To Reject The Literal Language Of The Hobbs Act.

When the statute's language is clear, as it is here, there is no need to go any further in construing the statute. *See, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished.") Petitioners invite this Court to do what it generally declines to do: use legislative history to give a statute a meaning other than the one the plain language dictates. Even if the Court accepts the invitation, none of the arguments offered by Petitioners and their *amici* justify abandoning the literal language of the law.

Petitioners point to the legislative history of the Hobbs Act, which is silent about why violence and threats of violence were added to the statute. The prior version of the Hobbs Act prohibited extortion and robbery, but did not also specifically prohibit violence or threats of violence. Pub. L. No. 486, 60 Stat. 420 (1946). In 1948, Congress approved the present form of the Hobbs Act which prohibits extortion, or robbery, or violence and threats of violence in interstate commerce. Pub. L. No. 772, 62 Stat. 793-94 (1948). Contrary to Petitioners' inference, there is no indication that Congress meant to prohibit only extortion and robbery. Nothing in the legislative history suggests

that violence and threats of violence are prohibited only if occurring during the commission of extortion or robbery. Congress's deliberate choice to change the language explicitly to prohibit violence and threats of violence, in addition to extortion and robbery, must be taken as conclusive evidence of congressional intent to make this a separate offense.

This reading of the statute also is consistent with the legislative history. The 1948 revision, which produced the current language, occurred at a time when Congress was enacting and recodifying federal laws to protect interstate commerce as much as possible. *See, e.g.*, 18 U.S.C. §§1361-1364 (prohibition of interference with communications, foreign commerce, destruction of government property); *see also* Bradley, *supra*, at 142-44. It is quite reasonable to conclude that as part of that process of federal criminal law reform, Congress intended to prohibit violence that obstructed interstate commerce.

The literal language of the statute is especially definitive because Congress approved the revision of the law. In *Continental Casualty Co. v. United States*, 314 U.S. 527, 530 (1942), this Court explained that where Congress has approved a revised statute, the language of the subsequent statute must be given full effect: "The change . . . in the Revised Statutes was made without any explanation of its purpose and indeed without the brackets or italics used to indicate a repeal or amendment. . . . The revised form, however, is to be accepted as correct, notwithstanding a possible discrepancy."

All that can be known of congressional intent is that Congress expressly approved a revision of a statute, entitled "Interference with commerce by threats or violence," to

include a prohibition of violence and threats of violence in addition to the existing language prohibiting only extortion and robbery. Congress realized that the Hobbs Act as previously written applied only to extortion or robbery and not other, even more serious heinous and often fatal acts of violence, such as murder or arson in interstate commerce. So as to clarify this, and be clear that it applied – as the title says – to acts of violence or threats of violence that are "part of a plan or purpose" to obstruct, delay, or affect interstate commerce, the statutory language was changed. *See Ex Parte Collett*, 337 U.S. 55, 61 (1949) ("Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of §1404(a), but from its legislative history. The short answer is that there is no need to refer to the legislative history where the statutory language is clear. The plain words and meaning of a statute cannot be overcome by a legislative history which through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.")

There is every reason why Congress would want, in addition to prohibiting extortion or robbery, to prohibit physical violence and threats of physical violence that are "in furtherance of a plan or purpose" to obstruct interstate commerce. There could be situations in which individuals threaten or commit acts of physical violence even though they did not seek anything in return and thus did not commit extortion or robbery. For example, individuals could commit physical violence against stores whose products they find immoral. Businesses owned by African-Americans or Jews could be targeted for violence by racist or anti-Semitic bigots. Protestors, or terrorists, could sabotage railroads, shipping, planes, or trucks. In

each of these examples, there would be neither extortion nor robbery, but there would be violence intended to obstruct interstate commerce which Congress understandably would want to prohibit. Violence and threats of violence that further a plan to obstruct interstate commerce have national consequences that are distinct from ordinary criminal acts.

Petitioners and their *amici* argue that following the literal language of the Hobbs Act could lead to undesirable prosecutions and deprive states of authority over criminal matters. *See, e.g.,* Scheidler Br. at 31; Amicus Br. of the State of Alabama, et al., at 10-12. The Hobbs Act, in its present form, has existed for 57 years and this problem has not been manifest. However, if the problem develops, the appropriate recourse is to convince Congress to change the law, not for this Court to negate the literal language of the statute. *See, e.g., Neal v. United States*, 516 U.S. 284, 295 (1996) ("Congress is free to change this Court's interpretation of legislation"); *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-73 (1989) ("Congress remains free to alter what we have done."); *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720, 736 (1977) ("Congress is free to change this Court's interpretation of its legislation.")

The concern over federalism raised in the amicus brief by certain states is without merit. Their concern ignores that the Hobbs Act has a crucial jurisdictional limit: it applies only to extortion, robbery, or physical violence or threats of violence to persons or property that obstruct interstate commerce. 18 U.S.C. §1951(a). Moreover, a defendant must commit the act of violence "in furtherance of a plan or purpose to . . . obstruct, delay, or affect commerce." The defendant must act with the purpose of interfering with interstate commerce. Thus, mugging a

salesperson is not covered, but a national campaign to obstruct access to businesses by violence and threats of violence – exactly what occurred here – is prohibited.[6]

Following the plain language of the Hobbs Act would not in any way adversely affect the activities of labor unions. *See* Amicus Br. of the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae. Section 1951(c) is explicit in stating that nothing in the Act is meant to "repeal, modify or affect" the provisions of federal law providing protections to labor unions. Moreover, in *United States v. Enmons*, this Court expressly held that union activities do not constitute extortion. The Court rejected "the theory that the [Hobbs] Act proscribes the use of force to achieve legitimate collective-bargaining demands." 410 U.S. at 407.

Nor does the rule of lenity, urged by Petitioners, provide a reason for this Court to refuse to follow the plain language of the statute. The rule of lenity only applies if the language of the statute is ambiguous. *See Staples v. United States*, 511 U.S. 600, 619 n.17 (1994); *Huddleston v. United States*, 415 U.S. 814 (1974); *Callanan v. United States*, 364 U.S. 587 (1961). But as shown above, the Hobbs Act is not at all ambiguous in prohibiting extortion

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[6] The concern raised by the Pacific Legal Foundation in its Amicus Brief is thus without foundation. Pacific Legal Foundation Br. at 24 ("this interpretation raises serious questions concerning the scope of federal power under the Commerce Clause.") The statute applies only if the conduct "obstructs, delays, or affects commerce or the movement of an article or commodity in commerce." §1951(a). In this case, the evidence clearly and overwhelmingly established that Petitioners were engaged in a concerted nationwide campaign of physical violence against reproductive health facilities with the purpose of obstructing their commerce.

or robbery or physical violence and threats of violence that "furthers a plan to obstruct" interstate commerce.

Petitioners argue that applying the Hobbs Act to violence and threats of violence in interstate commerce would render other statutes, such as the Freedom of Access to Clinics Entrances Act (FACE), unnecessary. Scheidler Br. at 30. Often there are multiple statutes prohibiting the same criminal conduct. *See, e.g., Branch v. Smith*, 538 U.S. 254, 273 (2003); *JEM AG Supply v. Sperber Adams Associates*, 524 U.S. 124, 141-44 (2001). Enactment of a statute that overlaps another is common and not a reason for depriving the Hobbs Act of its plain meaning.

Moreover, a later-enacted statute does not change the meaning of the earlier law, especially as here where the statute's plain language is clear. In *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996), this Court noted: "We add that, in any event, the view of a later Congress cannot control the interpretation of an earlier enacted statute." In other words, interpretation is controlled by the language of the statute being applied and not the later law. Ronald Benton Brown and Sharon Jacobs Brown, Statutory Interpretation: The Search for Legislative Intent 154 (2002).

That is especially true here where Congress, in enacting FACE, sought to make it easier to obtain a remedy for interfering with reproductive health providers and places of worship. RICO requires a pattern of activity, while FACE provides a remedy after the first act. Moreover, Petitioners' argument, that FACE is a basis for narrowly construing the Hobbs Act, is disingenuous since they continue to challenge the constitutionality of that

law. *See, e.g., United States v. Bird*, 401 F.3d 633 (5th Cir. 2005), *cert. denied*, 2005 WL 150754 (October 3, 2005); *United States v. Gregg*, 226 F.3d 253, *cert. denied*, 532 U.S. 971 (2001); *United States v. Weslin*, 156 F.3d 292, 297-98 (2d Cir. 1998) (*per curiam*), *cert. denied*, 525 U.S. 1071 (1999); *United States v. Wilson*, 154 F.3d 658 (7th Cir. 1998), *cert. denied*, 525 U.S. 1081 (1999).

Simply put, this is the classic case where the statute is clear and its language must be followed. The Hobbs Act prohibits extortion or robbery or physical violence and threats of physical violence designed to obstruct interstate commerce.

III. RICO PERMITS PRIVATE LITIGANTS TO SEEK INJUNCTIVE RELIEF.

In asserting that RICO does not authorize private parties to obtain injunctions, Petitioners urge a reading of RICO that does violence to the statute's express terms and is inconsistent with the principle that "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979).

Petitioner Operation Rescue asserts: "This Court appears already to have acknowledged that private injunctive relief is not available under RICO." Operation Rescue Br. at 25. Never has this Court said or implied this. In *NOW II*, this Court granted review on this issue, but concluded its opinion by stating: "We therefore need not address the second question presented – whether a private plaintiff in a civil RICO action is entitled to injunctive relief under 18 U.S.C. §1964." *Scheidler*, 537 U.S. at 411.

A. RICO Expressly Authorizes Injunctive Relief to Private Parties.

As explained above, statutory interpretation begins with a statute's language and where, as here, that language is unambiguous, it ends there. *See Estate of Cowart v. Niklos Drilling Co.*, 505 U.S. 469, 479 (1992). Section 1964(a) unambiguously gives district courts broad power to remedy RICO violations, including the power "to prevent and restrain violations of section 1962" and to "impos[e] reasonable restrictions on the future activities" of statute violators.[7] Nothing could be a clearer authorization of the power to issue injunctions than this statement.

Petitioners nevertheless assert that §1964(a) addresses only standing. Their argument ignores two other sub-sections of §1964: standing is conferred in §1964(b) for the United States and in §1964(c) for private parties whose business or property is injured by RICO violations. Nothing in either §1964(b) or §1964(c) precludes the United States or private parties from seeking equitable remedies under §1964(a). The most logical reading of these three sub-sections is that (a) authorizes remedies, while (b) and (c) specify which parties have standing to seek them.

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[7] The Seventh Circuit correctly rejected Petitioner Scheidler's argument (Scheidler Br. at 42) that §1964(a) is "purely jurisdictional." Section 1964(a) "grant[s] district courts authority to hear RICO claims and then spells out a non-exclusive list of the remedies district courts are empowered to provide in such cases." SPA 9a. Even Operation Rescue says (Operation Rescue Br. at 19-20) that §1964(a) both "confers jurisdiction and authorizes certain remedies." Because §1964(a) identifies remedies, it cannot be "purely jurisdictional." The Seventh Circuit's ruling comports with this Court's jurisprudence. *See, e.g., Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) ("jurisdiction" refers to the court's "power to declare the law," not to remedies or standing).

Because RICO's text plainly authorizes injunctive relief to private parties, Petitioners are forced to argue (Operation Rescue Br. 33-34; Scheidler Br. at 43) that a limitation on the powers of federal courts should be implied. According to Petitioners, since the government is authorized to seek interim injunctive relief under §1964(b), the absence of an express reference to equitable relief for private plaintiffs in §1964(c) precludes private-party injunctions. Nothing in §1964(b) states or implies, however, that §1964(a) is restricted to the government. That §1964(b) authorizes the Attorney General to seek temporary relief is not evidence that only the Attorney General is permitted to seek permanent forms of relief. Indeed, if the availability of injunctive relief were determined by reference to Section 1964(b), Section 1964(a) would be superfluous, and "courts should disfavor interpretations of statutes that render language superfluous." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253 (1992).

Similarly, §1964(c) does not indicate that treble damages are a private plaintiff's exclusive remedy.[8] As the Seventh Circuit reasoned, because the government's authority to seek permanent injunctions stems from the combination of the grant of a right of action in §1964(b) and the grant of authority for courts to enter injunctions in §1964(a), there is "no reason not to conclude, by parity of reasoning, that private parties can also seek injunctions

[8] Entitlement to attorneys' fees and treble damages are specified in the law because they are extraordinary and would not exist without specific statutory authorization. But federal courts inherently have authority to issue injunctive relief unless a statute expressly eliminates this power.

under the combination of grants in §§1964(a) and (c)." *NOW II*, 267 F.3d at 697. Petitioners claim (Operation Rescue Br. at 20; Scheidler Br. at 42-43) that because §1964(b) says the Attorney General "may institute proceedings," while §1964(c) says private plaintiffs "may sue," only the Attorney General can seek permanent injunctive relief. But this conclusion does not follow. As the Seventh Circuit found, these phases are "equivalent" 267 F.3d at 697, and both allow parties with standing to use §1964(a) to seek injunctions.

In addition, federal courts are "presum[ed]" to retain all of the equitable powers conferred by the Judiciary Act of 1789, 1 Stat. 73, 78, unless a statute clearly denies such equitable relief. This Court has long required the "clearest command" from Congress before federal courts can be stripped of their equitable powers. *Califano*, 442 U.S. at 705; *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 70-71 (1992) ("[A]bsent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.")

Not even Petitioners contend that RICO explicitly denies injunctive relief to private parties. Rather, Petitioners contend that RICO strips courts of the power to issue injunctions by implication. There is no basis for inferring this preclusion. On the contrary, Congress enacted RICO with the understanding that the courts of law and equity had merged, broadly enabling courts, in their discretion, to award equitable relief as a remedy for injured parties with standing. *See Grupo Mexicano v. Alliance Bond Fund*, 527 U.S. 308, 318-19 (1999). Moreover, RICO expressly provides that its stated remedies are not intended to supersede any additional civil remedies

available by virtue of other provisions of law. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, §904(b), 84 Stat. 922, 947.

The injunctive remedy is particularly important because RICO addresses ongoing criminal enterprises that in many cases, as here, commit open-ended pattern crimes. In addition, in class actions such as this one, "injunctions may be necessary to protect the interests of absent class members and to prevent repetitive litigation." *Califano*, 442 U.S. at 705.

The Seventh Circuit's ruling is also faithful to the statutory mandate that RICO "be liberally construed to effectuate its remedial purposes." Pub. L. 91-452, §904(a), 84 Stat. 922, 947 (1970). RICO's liberal-construction clause – a rarity in criminal statutes – was included to ensure that "Congress' intent is not frustrated by an overly narrow reading of the statute." *Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993). This Court consistently has rejected interpretations that would unduly limit RICO's scope. *See, e.g., Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 165 (2001); *Salinas v. United States*, 522 U.S. 52, 61-66 (1997); *NOW I*, 510 U.S. at 256-62; *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 236-37 (1989); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985). This Court has stressed that "the statute's remedial purposes are nowhere more evident than in the provision of a private action for those injured by racketeering activity." *Sedima*, 473 U.S. at 498.

B. RICO Does Not Strip Courts of Equitable Powers By Implication.

Petitioners argue that the interpretation of § 1964(a) is controlled by two old antitrust cases, which they say establish that any statute authorizing treble damages implicitly strips courts of the power to issue injunctions. Operation Rescue Br. at 22-23; Scheidler Br. at 38-39. This argument reads part of the antitrust laws out of context, contradicts a plain reading of the RICO statute, ignores crucial differences between the antitrust laws and RICO, and disregards the many federal statutes that, like RICO, authorize both treble damages and injunctive relief.

Neither *Minnesota v. Northern Securities Co.*, 194 U.S. 48 (1904), nor *Paine Lumber Co. v. Neal*, 244 U.S. 459 (1917), held that the treble damages provision of the Sherman Act excluded private injunctive relief. Neither case rested on the Sherman Act treble damages provision; rather, both turned on standing. *See Northern Sec.*, 194 U.S. at 70 (plaintiff had no standing because it lacked antitrust injury); *Paine Lumber*, 244 U.S. at 471 (same). The Court's decision in both cases hinged on §4 of the Sherman Act, which provides that: "[I]t shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations." Because §4 made it the government's express duty to sue for injunctions, the Court concluded that Congress did not intend private parties to do the same.

In marked contrast to §4 of the Sherman Act, RICO's permanent-injunctions section, §1964(a), does not mention any particular party; it directly grants power to issue

injunctions to the federal courts without restriction as to party. If permanent-injunction language had been included in §1964(b), which mentions only the government, or if the same governmental-duty language in Sherman §4 had been included in §1964(a), Petitioners would have a stronger argument. But RICO's remedies section was not written that way. The important textual differences between Sherman §4 and RICO §1964(a) show that *Paine Lumber* and *Northern Securities*, both decided before the merger of law and equity, have no application. *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 459 (1977).

Like the Sherman Act, the Clayton Act contains major structural differences from §1964. Section 15 of the Clayton Act, 38 Stat. 730, 736-37 (1914), 15 U.S.C. §25, is almost identical to §4 of the Sherman Act, expressly imposing a duty on the government to "institute proceedings in equity to prevent and restrain" violations; RICO's §1964(a) has no such governmental duty clause. Because §1964(a) is not limited to any particular party, it was unnecessary for Congress to address private injunctive relief separately, as it was in the Clayton Act, where §15 contains the government's "duty" language. 15 U.S.C. §26.

In fact, Congress deliberately drafted RICO separate from the antitrust laws to avoid antitrust precedent on matters such as standing and causation. *See Sedima*, 473 U.S. at 498. As a result, this Court often has rejected the antitrust analogy when analyzing RICO. *See, e.g., Tafflin v. Levitt*, 493 U.S. 455, 460 (1990); *Sedima*, 473 U.S. at 498. Where, as here, the language and structure of the antitrust laws significantly differ from that of RICO, those laws provide no meaningful guidance.

C. RICO's Legislative History Does Not Support Petitioners.

Petitioners' examination of the legislative history of RICO (Operation Rescue Br. at 26-29; Scheidler Br. at 45-48) ignores this Court's admonition that it is the language of RICO itself that provides "the most reliable evidence of [congressional] intent." *United States v. Turkette*, 452 U.S. 576, 593 (1981). This Court consistently has held that only the "most extraordinary showing of contrary intentions from [the legislative history] would justify a limitation on the 'plain meaning' of the statutory language." *Garcia v. United States*, 469 U.S. 70, 75 (1984); *see also, Salinas v. United States*, 522 U.S. at 57. But even if there were some ambiguity in RICO, Petitioners cannot satisfy the high burden of establishing clear congressional intent to limit the federal courts' inherent power to grant injunctions.

Petitioners urge two particularly unreliable uses of legislative history. First, Petitioners suggest, relying largely on *Religious Technology Center v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), that because Congress did not enact a proposal that would have separately provided for private injunctions, the broad statutory grant of equitable power in §1964(a) should be restricted to the government. Operation Rescue Br. at 27-28; Scheidler Br. at 46-48. This argument is based on the erroneous notion that Congress was repeatedly presented with the opportunity to permit private plaintiffs to seek injunctions and repeatedly rejected it.

In fact, Congress never rejected a provision specifically authorizing private injunctions. In RICO's floor debate, Representative Steiger offered an amendment addressing a number of RICO's provisions, including the

amount in controversy, intervention by the Attorney General, statute of limitations, damage remedies for the government, and private injunctions. *See* 116 Cong. Rec. 35,346 (1970). "The proposal was greeted with some hostility because it had not been reviewed in Committee, and Steiger withdrew it without a vote being taken." *Sedima*, 473 U.S. at 487-88. The Judiciary Committee members had agreed to oppose all floor amendments, which makes the withdrawal of this one inconsequential. G. Robert Blakey & Scott D. Cessar, *Equitable Relief Under Civil RICO*, 62 Notre Dame L. Rev. 526, 550 n.103 (1987). Petitioners neglect to mention what Representative Steiger himself said about the bill: "[T]he bill as it now stands . . . may have this option [of equitable relief]." 116 Cong. Rec. 35,347 (1970).

After RICO became law, a similar amendment affecting multiple provisions was introduced. 117 Cong. Rec. 46,386, 46,393 (1971). The Senate Judiciary Committee reported favorably on the bill, and it passed the Senate without a single vote against it, 118 Cong. Rec. 29,368-69, 29,379 (1972); but the bill was never voted on by the House, 119 Cong. Rec. 10,317 (1973).

The fact that RICO's sponsors asked that an amendment affecting many of RICO's provisions be withdrawn without a vote, or that the same bill was later approved without opposition by the Senate but not voted on by the House, says nothing about congressional intent regarding the particular proposed provision relating to private equitable relief. *See United States v. Craft*, 535 U.S. 274, 287 (2002) (congressional inaction lacks significance because many inferences may be drawn from inaction). Failure to pass a bill that would have amended several of RICO's provisions may be explained by many reasons,

including opposition to some other portion of the amendment or the belief that such a provision was redundant. This Court's decisions make clear that this type of legislative history is equivocal at best. It surely is not the requisite "clearly expressed legislative intent" that Petitioners must show to trump both RICO's text and the federal courts' inherent power.

Petitioners' second legislative history argument is equally unavailing. They contend that because the Senate initially passed RICO without §1964(c)'s treble damages provision, §1964(c) must be read in a vacuum, as if §1964(a) were not part of the statute. Operation Rescue Br. at 26-27. In essence, Petitioners argue that the meaning of §1964(a) was frozen in time at a point when the bill had no application to private parties. When Congress granted private parties standing, it made no effort to change the language of §1964(a) to limit its reach only to the government. The plain language of the statute as amended authorizes private parties to seek the relief authorized in the subsections that already existed.

D. Private Injunctions Serve RICO's Express Purposes.

An express purpose of RICO is to eradicate crime in the United States "by establishing new penal provisions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. 91-452, 84 Stat. 922, 922-23 (1970). Congress aimed not only at the mafia, but at any group who, like Petitioners, engage in a widespread and organized pattern of violence and threats. Congress created RICO's civil remedies to encourage private plaintiffs "to fill

prosecutorial gaps," *Sedima*, 473 U.S. at 493, and to turn victims "into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity," *Rotella v. Wood*, 528 U.S. 549, 557 (2000). And where racketeers who injure private businesses are judgment-proof, as Petitioners claim to be, e.g., PX 1503, the threat of damages alone has no deterrent effect. Thus, private injunctive relief is essential to effectuate RICO's purpose.

This Court should decline Petitioners' invitation (*see, e.g.*, Scheidler Br. at 48-50) to add an unwritten restriction to RICO on policy grounds. Neither Petitioners nor their *amici* point to a single instance in which a federal court has had any difficulty exercising equitable discretion in a private-plaintiff antitrust case, a power that antitrust laws have long allowed. *See, e.g., Blue Cross v. Marshfield Clinic*, 152 F.3d 588 (7th Cir. 1998) (noting that equitable relief is often available in antitrust cases when damages are not).

Petitioners' argument also ignores the statutory limits on a court's power to issue equitable relief. Section 1964(c) provides that persons injured in their business or property by reason of a violation of §1962 "may sue therefor." This language requires that there be a direct nexus between the injury to business or property and any equitable relief awarded.

After a full trial on the merits, the district court concluded that Petitioners have "a history of unlawful conduct," including repeated acts of violence and threats of violence against Respondents and other persons and business entities across the United States. SPA 133a. Based on the need to protect Respondents and the public from ongoing crime, it issued a permanent injunction to

prevent future violence. Such relief serves the very core of RICO's purposes, and this Court should decline Petitioners' invitation to limit artificially RICO's equitable remedies.

CONCLUSION

For all of these reasons, the decision of the United States Court of Appeals for the Seventh Circuit should be affirmed.

Respectfully submitted,

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